BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

ORIGINAL
FILE

In the Matter of	)	
Tariff Filing Requirements for Interstate Common Carriers	)	CC Docket No. 92-13

COMMENTS OF
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Of Counsel:
Michael F. Altschul
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Washington, D.C. 20036

Philip L. Verveer
Sue D. Blumenfeld
Michele R. Pistone
Willkie Farr & Gallagher
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 328-8000

Counsel for
Cellular Telecommunications
Industry Association

DATED: March 30, 1992

TABLE OF CONTENTS

Summary

CTIA believes that the Commission has the authority under sections 4(i) and 203 of the Communications Act of 1934 to continue to permit common carriers, including cellular carriers, not to file tariffs. The tariffing policies in both the mobile services area and those developed more broadly for all competitive services in the Competitive Carrier orders reinforce this conclusion.

Since the initiation of cellular service, and indeed for decades prior with respect to conventional mobile services, the regulatory arrangements have provided for these services to be free of tariff regulation at the federal level. This long-standing practice evolved largely because of the general recognition that cellular services are local in nature and thus more appropriately left to the jurisdiction of the state regulatory agencies. In fact, the Commission's interstate authority in this area derives primarily from the FCC's management of spectrum rather than from the offering of interstate services by such carriers to interstate consumers. The Competitive Carrier rulemaking orders establish with equal force the principle that the Commission has the authority, pursuant to the Communications Act, to forbear from requiring cellular (and other) carriers to file tariffs.

There is no reason in law or in fact to depart from this policy now. The questions raised in the Notice regarding the Commission's authority after Maislin are not relevant to the Commission's long-standing forbearance policies under the Communications Act nor to the rationales which have led the Commission to rely on state regulatory judgments in the mobile field generally and in cellular specifically.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the Matter of	)	
Tariff Filing Requirements for Interstate Common Carriers	)	CC Docket No. 92-13

COMMENTS OF
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Cellular Telecommunications Industry Association ("CTIA"), by its attorneys, hereby submits its comments in the above-captioned Notice of Proposed Rulemaking.[1] CTIA is the principal trade association representing the cellular industry. More than 90 percent of the cellular operators licensed by the Commission are owned and operated by CTIA general members. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry.

Cellular service has been provided from its inception free of federal tariff supervision. Because it is primarily a locally provided service, local regulators have chosen individually whether, and to what extent, to supervise cellular

---

1 FCC 92-35 (rel. Jan. 28, 1992) (hereinafter "Notice").

prices. CTIA is thus vitally interested in this proceeding. As set forth below, CTIA believes that the Commission has authority under sections 4(i) and 203 of the Communications Act of 1934 (the "Communications Act") to continue to permit common carriers, including cellular carriers, not to file tariffs. This authority has been firmly established since the development of land mobile radio services and, further, accords with the Commission's long-standing Competitive Carrier decisions.[2]

INTRODUCTION

The pending Notice was issued as an outgrowth of a formal complaint filed by AT&T Communications against MCI Telecommunications Corporation.[3] While dismissing AT&T's complaint, the Commission found that issues raised in the

---

2 Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252 (Competitive Carrier Rulemaking), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (First Report); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982) (Second Report), recon., 93 FCC 2d 54 (1983); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 46,791 (Oct. 14, 1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (June 21, 1983); Third Report and Order, 48 Fed. Reg. 46,791 (Oct. 15, 1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (Fourth Report); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report), rev'd MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

3 AT&T v. MCI, E-89-297, FCC 92-36 (rel. Jan. 28, 1992).

complaint were "serious and important ones." Notice at ¶ 2. The Commission thus issued the Notice "to review the lawfulness and future application of our forbearance rules and policies." Without at all questioning the public interest benefits these policies have brought, the Notice expressed a need to address their legal viability.[4] The Commission thus sought comment on whether it has the legal authority to continue to forbear from tariff regulation, and if not, the extent to which it may revise or reinstate tariff regulations.

Since the initiation of cellular service, and indeed for decades prior with respect to conventional mobile services, the regulatory arrangements have provided for these services to be free of tariff regulation at the federal level. CTIA believes the existing structure well serves the public interest, and files these comments to review and confirm the Commission's legal authority to maintain it. Because in the specific case of cellular service the Commission's authority derives from two distinct sources, CTIA's comments will address both the long-standing tariffing policies in the mobile services area as well as those developed more broadly for all competitive services in the Competitive Carrier Orders.

---

4 This concern was premised primarily upon the Supreme Court's decision in Maislin Industries U.S., Inc. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990), a case involving the Interstate Commerce Act.

Because CTIA is confident that the Commission will be able to affirm its previous legal conclusions, we will not address the remaining issues raised in the Notice. If the Commission is ultimately required by the courts to reverse these interpretations, the agency will then need to review the state of competition in the jurisdictional markets within any newly defined legal imperatives for regulation. Until and unless that day comes, however, it would be futile, if not counterproductive to "return" the cellular industry (and others) to a regulatory scheme not created for those purposes and to which those carriers have never been subject.

I. The Commission Has a Long-standing Policy of Deferring to State Regulation for the Mobile Services Industry In General and the Cellular Industry Specifically.

In the cellular industry, and in the land mobile industry more broadly, the absence of tariff regulation of interstate services remains a long-standing practice. This practice evolved largely based upon the recognition that such services were, and remain, local in nature and thus more appropriately left to the jurisdiction of the state regulatory agencies.

At least as far back as 1965, the Commission articulated a clear policy to not require tariffs from mobile carriers, except in very limited circumstances. See Public Notice, 1 F.C.C. 2d 830 (1965). This policy was reaffirmed and republished "as a reminder" ten years later. See Public

Notice, 53 F.C.C. 2d 579 (CCB 1975).[5] The Bureau further encouraged mobile carriers to cancel any tariffs they may have had on file with the FCC. Id.

The Commission's practice of relying upon state regulation is unremarkable given the local character of mobile services. It is fair to say that virtually all of the FCC's mobile services policymaking has been based upon an assumption that the agency's interstate authority in this area derives primarily from the FCC's management of spectrum rather than from the offering of interstate services by such carriers to interstate consumers.[6] The local nature of mobile services has prompted the Commission to observe on numerous occasions that mobile services are intrastate communications services, and often exchange services, within the meaning of sections 2(b) and 221(b) of the Communications Act. See, e.g., MTS/WATS Market Structure, 97 F.C.C. 2d 834, 882 (1984) ("we have consistently treated the mobile radio services provided by RCCs and telephone companies as local in nature"); Mobile Radio Services, Gen. Dkt. No. 80-183, 93 F.C.C. 2d 908, 920 (1983)

---

5 The limited circumstance in which interstate tariffs would be required under this policy was "where an RCC applies a charge for its portion of interstate message toll service furnished through interconnection with a landline carrier...." Id.

6 For example, in Cellular Communications Systems, 86 F.C.C. 2d 469, 503-05 (1981), the FCC asserted federal primacy over some aspects of cellular services in order to ensure full and efficient utilization of spectrum and nationwide compatibility of the service.

("Because paging services have historically been local in nature, the states have traditionally regulated paging common carriers"). These same observations have been repeated in the specific context of cellular mobile services. See, e.g., Cellular Communications Systems, 86 F.C.C. 2d 469, 483-84, 504 (1981); TPI Transmission Services, Inc. v. Puerto Rico Telephone Co., 4 FCC Rcd 2246 (1989); MTS/WATS Market Structure, supra. Moreover, in the context of construing the AT&T consent decree, the courts have also recognized that "two-way mobile telephone and one-way paging services are exchange telecommunications services."[7]

The operational and marketing aspects of cellular service unequivocally support these findings. Like landline traffic patterns, the overwhelming percentage of cellular calls are jurisdictionally intrastate. Moreover, most interstate traffic which does occur relies ultimately upon the existing interexchange industry and in that sense does not depart materially from landline exchange companies' participation in interstate calling.[8] Cellular customers often are

---

7 United States v. Western Electric Co., 797 F.2d 1082, 1089 (D.C. Cir. 1986); United States v. Western Electric Co., 578 F. Supp. 643, 650 (D.D.C. 1983) (recognizing the local nature of cellular services).

8 "Like wireline telephone companies, RCCs [including cellular carriers] provide interstate services only to the extent that their facilities may be used to originate or terminate toll calls." MTS/WATS Market Structure, supra, 97 F.C.C. 2d at 883.

presubscribed to an interexchange (and thus interstate) carrier. Although those customers may incur airtime charges from the cellular carrier for interstate calls carried by the presubscribed carrier, the cellular airtime charges are not "interstate charges" as they apply to all airtime usage, whether local, intrastate toll, or interstate toll. Alternatively, and only where the cellular company is one not subject to the constraints of the Modification of Final Judgment,[9] cellular carriers will offer on a resale basis the interexchange services of other carriers. As such, they are subject to forbearance treatment under the Second Report and Order in 79-252. The remaining "interstate" usage of cellular service plainly falls within the purview of 221(b) of the Act because it is traffic that crosses state boundaries but is truly local in nature.

The regulatory framework for cellular services reflects a careful and deliberate division of responsibility between the Commission and the states so as to harmonize the FCC's own Title II and Title III policies and obligations with the mandates of sections 2(b) and 221(b) which reserve authority to the states. While asserting federal prerogatives in certain areas, the FCC has explicitly deferred "to the states jurisdiction with respect to charges, classifications,

---

9 United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

practices, services, facilities or regulations for service by licensed carriers." Cellular Reconsideration Order, 89 F.C.C. 2d 58, 96 (1982). As described above, this deferral was fully consistent with earlier FCC treatment of conventional mobile services. While there has been controversy construing the Communications Act with respect to the precise line of authority between the FCC and the state authorities for some aspects of cellular service operation, the Commission has long since decided that with respect to the issue of rates to end users, the state authorities should predominate.

FCC deferral to the states' rate supervision of local services involving some small degree of interstate traffic has occurred in other contexts. For example, it was not until 1980 that the FCC exercised its jurisdiction over the "open end" rates for interstate FX service. See Pacific Telephone, 88 F.C.C. 2d 934 (1981). As the Commission there explained, "we have forborne from active regulation in this area because we have perceived no compelling need for asserting a more direct role while the open end rates for interstate users have remained substantially equivalent to local exchange service rates subject to state oversight." Id. at 941. In light of questions of discriminatory rates in that case, the FCC chose to assert its full tariffing authority over rates and services theretofore unregulated at the federal level in reliance upon

the state regulatory regime.[10] Similarly, the Commission never attempted to require tariffs governing the interstate costs of customer premises equipment regulated by the states, although it readily could have done so since the separations process at the time actually allocated costs to both jurisdictions. See generally, North Carolina Utilities Comm. v. FCC, 552 F.2d 1036, 1050 (4th Cir. 1977), cert. denied, 434 U.S. 874 (1977); Dept. of Defense v. AT&T, 80 F.C.C. 2d 287, 291 (1980).

There is no reason in law or in fact to depart from this policy now. The questions raised in the Notice regarding the Commission's authority after Maislin are not even relevant to the rationales which have led the Commission to rely on state regulatory judgments in the mobile field generally and in cellular specifically. As discussed above, there is ample precedent supporting the current regulatory framework; the fact that it enjoys a long, successful history of agency practice itself demands considerable deference from any reviewing body. See Chevron U.S.A. v. Nat'l. Resources Defense Council, 467 U.S. 837 (1984); N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267, 274-75 (1974); Ryder Truck Lines, Inc. v. U.S., 716 F.2d 1369,

---

10 See also New York Tel. v. FCC, 631 F.2d 1059, 1064-65 (2d Cir. 1980).

1380 (11th Cir. 1983).[11] Most significantly, as discussed in the next section, there is every reason to believe that this division of responsibility has served cellular consumers well.

II. The Commission Has Authority To Continue To Permit Nondominant Carriers Not to File Tariffs

The Competitive Carrier rulemaking orders establish with equal force the principle that the Commission has the authority pursuant to the Communications Act to forbear from requiring cellular (and other) carriers to file tariffs. As explained below, these policies are sound and lawful; Maislin does not require their reversal at this late date.

CTIA notes at the outset that the Commission has never expressly applied the provisions of 79-252 to the cellular industry.[12]

---

11 Thus, to the extent the Commission may be acting out of concern for the merits of any anticipated appellate proceeding, it should keep in mind that its 79-252 policy is entitled to a high level of deference.

12 In the Fifth Report and Order, the Commission noted that "dominant regulation" still applied to numerous classes of carriers, including, inter alia, DPLMRs, MDS and cellular. The Order explains: "We have not yet examined the market power of the[se] carriers." 98 FCC 2d 1191, 1204 n. 4. Because the Commission's policies specific to locally provided mobile services would preclude tariff regulation independent of 79-252, there never developed a need for such examination. As discussed infra, moreover, the FCC has found the cellular industry to be competitive.

A. The Competitive Carrier Orders Represent Sound Policy and Are Within the Agency's Lawful Authority.

The major impetus behind Docket 79-252 was the recognition that public utility regulation -- designed for a monopoly service environment -- should not be extended to competitive markets. In the specific context of tariffs, the Commission found that section 203 did not require the mindless application of the section's requirements to any and all service providers. Further, the overall policies of Title I would not permit such application given the potential harm involved. Without reiterating each step of the Commission's analysis, a brief review is helpful to the context of the instant Notice.

The section 203 requirement to file tariffs was originally imposed upon monopoly service providers in an effort to ensure just and reasonable pricing and to deter discrimination. By filing all tariffs before their effectiveness the Commission could ensure that the rates were reasonable before they were imposed on ratepayers. In an environment in which there were monopoly carriers the benefits of ensuring reasonable pricing by prior Commission review clearly outweighed the burdens this requirement imposed. See generally Notice of Inquiry and Proposed Rulemaking in CC Dkt. 79-252, 77 FCC 2d 308 (1979).

The environment in which this requirement was conceived, however, had changed dramatically by 1979 and all the more so as the Commission revisits these issues in 1992. Nondominant carriers are ineffectual at charging

supracompetitive rates in today's competitive markets. On the contrary, these carriers are price takers and thus by definition charge reasonable rates. Furthermore, the complaint process serves as a backup to assure that rates remain reasonable and nondiscriminatory. A requirement that such service providers file tariffs would only impede competition, potentially facilitate collusion, impose costly burdens, and harm consumers.

In a competitive environment the costs of imposing traditional regulatory procedures on non-dominant carriers far exceed any benefits to society. Instead, the Competitive Carrier practice currently in place, which eliminates cumbersome regulation and unnecessary delay resulting from the requirement to file tariffs, effectuates the overall goals of the Act. After all, regulation is itself only a poor substitute for market forces -- a second best solution given market failure.

These ineluctable conclusions prompted the FCC in Docket 79-252 to consider the extent of its authority to forbear from regulating competitive carriers. It found sufficient flexibility under both Sections 203(b)(2) and Title I to avoid the costs and harms of tariff regulation of non-dominant carriers. As discussed infra, Congress subsequently approved this construction.

The policy and legal analyses of 79-252 apply to various telecommunications suppliers within the FCC's

jurisdiction, including cellular carriers. Although the FCC has never had the occasion to specifically apply the Competitive Carrier rules to cellular companies, the competitive nature of their services plainly makes them equally suitable candidates.

The Commission's cellular policies have consistently recognized -- indeed, hinged upon -- the competitive nature of cellular service. The correctness of the Commission's initial expectation in 1981 that cellular would develop in a competitive environment has been confirmed on several occasions. See Cellular Resale Policies, 6 FCC Rcd 1719 (1991) appeal pending sub nom., Cellnet Communications v. FCC, D.C. Cir. No. 91-1251. Amendment of Parts 2 and 22 of the Comm. Rules (Cellular Auxiliary Offerings), 3 F.C.C. Rcd 7033, 7038 (1988), recon., 5 F.C.C. Rcd 1138 (1990). These decisions are based on observations regarding both the competition within the cellular business as well as the close substitutability of other services.[13] These same findings have been made by the overwhelming majority of state PUCs. See, e.g., Cellular Radio Telephone Utilities, I.88-11-040 (Calif. PUC 1990); Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Case No. 29469, Op. No. 89-12 (N.Y. P.S.C. 1989).

---

13 The state of competition in the cellular industry was fully documented in CC Dkt. 91-34 and CTIA incorporates its comments in that proceeding here.

Thus, the Competitive Carrier Orders stand as another line of policy and legal authority upon which cellular companies operate free of federal tariffing requirements. To the extent there is ambiguity in the Commission's failure to articulate the literal applicability of these rules to cellular carriers, CTIA respectfully requests that the Commission clarify that such rules are in fact intended to apply to the cellular industry.

B. Subsequent Amendments to the Communications Act Confirm the Commission's Forbearance Authority.

The Notice correctly identifies the enactment of section 226 as evidence of the lawfulness of the Commission's Competitive Carrier policies. The fact that Congress recently enacted new tariffing provisions to Title II of the Communications Act, yet did not alter the Commission's interpretation of sections 4(i) and 203, evinces Congress' intent to adopt the Commission's long-standing interpretation of those provisions. See Canada Packers Ltd. v. Atchison, T. & S.F. Ry. Co., 385 U.S. 182 (1966); United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932). In questions of administrative interpretations of statutes, great weight has always been given to the principle "that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction." Red Lion Broadcasting v. F.C.C.,

395 U.S. 367, 394 (1969) (emphasis added). Thus, when Congress recently enacted the tariff filing requirements for operator service providers it implicitly affirmed the validity of the forbearance rule as applied to Title II common carriers.

It is clear from Congress' recent enactment of the Telephone Operator Services Consumer Improvement Act of 1990, 47 U.S.C. § 226 (1990), that Congress was aware of, and approved of, the Commission's forbearance practice. In fact, Congress specifically noted the Competitive Carrier rulemaking and the Commission's actions relieving certain carriers from the tariffing requirements of section 203. S. Rep. No. 439, 101st Cong., 2nd Sess. 3-4, n.10 (1990). Unhappy with the Commission's application of its general forbearance rules to the specific case of operator service providers, Congress codified a narrow departure from the forbearance rules in this limited instance and legislatively required operator service providers to file tariffs.

Congress was careful, moreover, to not disturb the remaining regulatory (statutory or administrative) framework. See Section 226(i) ("Nothing in this section shall be construed to alter the obligations, powers, or duties of common carriers or the Commission under the other sections of this Act"). In requiring informational tariffs in section 226, Congress expressly noted that these would be less stringent than those required to be filed under applicable Commission guidelines. It was careful to state its clear intent not "to change the

existing filing requirements as then imposed. Id. at 23. The Senate Report further noted that "the Committee does not expect that these informational tariffs would require the same amount of supporting documentation as required of most dominant carriers," thereby reflecting considerable study and deference to the regulatory framework as applied outside the OSP context. Congress plainly could have chosen to reimpose tariffing requirements on carriers other than OSPs had it disapproved the existing policies. By codifying a limited departure from the long-standing Commission practice, while expressly acknowledging the FCC's practice overall, Congress implicitly approved the operation of the forbearance rule.[14]

---

14 The enactment of section 226 also reflects Congress' approval of the policy rationale underlying Competitive Carrier. Section 226 mandates informal tariffs, but not ad infinitum. Congress noted that "[i]f the other provisions of [section 226] have a positive effect in promoting competitive rates and services, however, the need for the[] tariff filings diminishes." Id. Congress thus restored the Commission with the authority to waive the tariff filing requirements after four years -- thereby returning the FCC to the Competitive Carrier status quo even in the case of OSPs. See 47 U.S.C. § 226(h)(1)(B)(1991).

Congress in fact reviewed the Commission's regulatory flexibility in the context of amending the tariffing sections of Title II even prior to the enactment of Section 226. In explicitly rectifying perceived problems in the tariff regulation as then applied to some carriers (specifically Section 204 investigations), there was never any suggestion or hint in the legislative history of any disapproval on Congress' part with the forbearance rule applicable to other carriers. See S. Rep. No. 142, 100th Cong., 2d Sess. 5 (1988); 134 Cong. Rec. H10453 (Oct. 19, 1988) (Statement of Senator Inouye).

The legislative histories of both Section 204(a)(2) and Section 226 provide persuasive evidence that Congress has approved the Competitive Carrier orders.

C. Maislin Does Not Require Reversal of the Competitive Carrier Orders.

The recent Supreme Court interpretation of the Interstate Commerce Act, 49 U.S.C. § 10101 et seq. (1989), in Maislin does not invalidate the Commission's forbearance policy. Plainly, the Maislin holding is inapposite because it does not construe the Communications Act. Despite the common origins of the Interstate Commerce Act and the Communications Act, the acts were designed to apply to industries with distinct concerns and accordingly have been given varying statutory constructions.[15] In fact, the House Report for the Communications Act points out that there are several intended inconsistencies in the terms of the two acts. See AT&T v. FCC, 503 F.2d 612, 616, quoting H.R. Rep. No. 1850, 73rd Cong., 2d Sess. 4 (1934). Such inconsistencies were designed to reflect

---

15 See AT&T v. FCC, supra, 503 F.2d at 616 (2d Cir. 1974). While recognizing that the Interstate Commerce Act served as a model for the Communications Act, the Second Circuit noted that the congressional intent of the Communications Act "was not to provide a carbon copy of the Interstate Commerce Act."

the inherent differences between the regulation of communications and transportation common carriers.[16]

Significantly, the language in section 203(b)(2) of the Communications Act regarding the category of requirements which the Commission may modify in its discretion, was altered from the corresponding Interstate Commerce Act provision. Section 203(b)(2) of the Communications Act provides that:

> The Commission may, in its discretion, and for good cause shown, modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions.

47 U.S.C. § 203(b)(2) (1989). At the time of the Communications Act's enactment the Interstate Commerce Act granted the Interstate Commerce Commission authority "to modify the requirements [of that section] in respect to publishing, posting, and filing of tariffs," see 49 U.S.C. § 6(3) (1934), whereas the Communications Act broadened the authority by permitting the Commission to modify any requirement. The

---

16 Specifically, the Interstate Commerce Act was conceived generally in a competitive environment. Thus the question of how its provisions would apply in a competitive environment was clearly in the mind of Congress at the time of the Interstate Commerce Act's enactment. Since an agency may not substitute its own solution to a problem already addressed by the legislature, the Court could not uphold the ICC's solution to an issue which Congress faced under similar market conditions. In contrast, the Communications Act was legislated when there were principally monopoly service providers and therefore Congress' mechanism for responding to a competitive communications environment is less clear.

Commission's 1979 interpretation of this language, that is, that the FCC has authority to forbear from requiring the filing of tariffs under the plain meaning of the broader Communications Act, was confirmed by Congress in 1990, and should not be disturbed based upon the Court's literal construction of another, wholly separate statute.

Fundamentally, the Notice misinterprets the principle addressed in Maislin. The so-called "filed rate" doctrine, which Maislin confirmed, is not at issue in the instant proceeding. Pursuant to the filed rate doctrine, a carrier is required to charge its customers the rate that it has filed with its supervisory agency. Carriers are prohibited from negotiating tariffs with customers which vary from the rates which are filed and of which the public has notice.[17] The doctrine is designed to prevent carriers from departing from the published rates so as to avoid unreasonable discrimination and customer confusion.

The question proposed in the Notice, however, is not whether a carrier which has filed an effective tariff must abide by that filing. Rather, the linchpin of AT&T's challenge

---

17 See Louisville & Nashville R.R. v. Maxwell, 237 U.S. 94, 97 (1915); Illinois Cent. Gulf R.R. Co. v. Golden Triangle Wholesale Gas Co., 586 F.2d 588 (5th Cir. 1978) The courts have upheld the doctrine's application in the communications area as well. See Marco Supply Co. v. AT&T, 875 F.2d 434, 436 (4th Cir. 1989); MCI Telecommunications Corp. v. TCI Mail, Inc., 772 F. Supp. 64, 67 (D.R.I. 1991).

to the Competitive Carrier rulemaking is whether the Commission has the authority to permit carriers to provide service entirely free of tariffs for all customers of that service. This question, not addressed in Maislin, was properly decided by the Commission after a thorough review and comment process in the Competitive Carrier proceeding. Ultimately, the Commission properly found that there is nothing in the Act which requires the agency to enforce certain sections of the Act when to do so would be contrary to the public interest and the goals of efficient, reasonably priced service. The policy considerations that originally compelled the Commission to refrain from imposing traditional regulatory procedures on nondominant carriers in the Competitive Carrier proceeding are as relevant today as they were at the inception of those proceedings. The conclusions reached in those proceedings need not as a matter of law, and plainly should not as a matter of policy, be altered today.

CONCLUSION

The policies by which cellular (and other) carriers have provided services to customers free of federal tariff regulation remain sound. Legal developments since the promulgation of these policies confirm the Commission's legal

authority in this area. Based on the foregoing, CTIA respectfully urges the Commission to reaffirm the existing regulatory structure.

Respectfully submitted,

Sue D Blumenfeld

Philip L. Verveer
Sue D. Blumenfeld
Michele R. Pistone
Willkie Farr & Gallagher
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 328-8000

Counsel for
Cellular Telecommunications
Industry Association

Of counsel:
Michael F. Altschul
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Washington, D.C. 20036

DATED: March 30, 1992